

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Woodman Patnership Trust, Jack D.
Woodman, Partner/Trustee,
Appellant,

v.

Adams County Board of Equalization,
Appellee.

Case No: 15A 0222

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is an agricultural tract of land situated in the NW1/4 of 3-8-12, Adams County, Nebraska.
2. The Adams County Assessor (the County Assessor) assessed the Subject Property at \$919,265 for tax year 2015.
3. The Taxpayer protested this value to the Adams County Board of Equalization (the County Board) and requested an assessed value of \$675,940 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$919,265 for tax year 2015.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on August 4, 2016, at the Hamilton County Courthouse, Aurora, Nebraska, before Commissioner Nancy J. Salmon.
7. Jack D. Woodman was present at the hearing for the Taxpayer.
8. David A. Bergin, Deputy Adams County Attorney, was present for the County Board. Also present on behalf of the County Board was Jim Kuhn, an appraiser for the Adams County Assessor's Office.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission's review of the determination of the County Board of Equalization is de novo.²
11. When considering an appeal a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

sufficient competent evidence to justify its action.”³ That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”⁴

12. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer asserted that the Subject Property was overvalued. He contends that the soil of the Subject Property is sandy and, as a consequence, does not produce as much as a parcel containing black or richer soil. He also disputed the land use as listed in the county records. Lastly, he claimed that a 35% increase in value is simply too high.
17. The County Assessor’s representative stated that he assessed the Subject Property as required by law. He did so utilizing the market (sales comparison) approach. Actual value is defined by Nebraska Statute as:
[T]he market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property, the analysis shall include a consideration of the

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965)

(determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

⁸ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

full description of the physical characteristics of the real property and an identification of the property rights being valued.⁹

18. Valuation of agricultural and horticultural land is also addressed in the Nebraska Department of Revenue Regulations. See, Title 350, N.A.C. Chap. 14, §006. The regulations state that both a market (sales comparison) approach or an income approach may be used to determine actual value of agricultural or horticultural land, but “Reconciliation of final value is based on the appropriateness of the approach to value (**market value is preferred in the valuation of agricultural land**) and the availability and reliability of the information used in each approach.¹⁰
19. The Commission finds that the sales Comparison approach best determines actual value of the Subject Property. The Taxpayer did not provide documentation to quantify the differences between properties such as his and other irrigated land within the county. Nor did he provide sufficient evidence to allow for a determination of value using the income approach. The Commission is unable to provide relief without some quantifiable evidence.
20. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
21. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2015, is Affirmed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$919,265
Total	\$919,265
3. This Decision and Order, if no further action is taken, shall be certified to the Adams County Treasurer and the Adams County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.

⁹ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁰ 350 Neb. Admin. Code, Chap 14, §006.03 (Emphasis added).

6. This Decision and Order shall only be applicable to tax year 2015.
7. This Decision and Order is effective on August 9, 2016.

Signed and Sealed: August 9, 2016

Nancy J. Salmon, Commissioner